



STATE OF NEW JERSEY

In the Matter of Matthew Bulzak
Camden County, Department of
Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2016-1696
OAL DKT. NO. CSV 4001-17

ISSUED: JULY 20, 2018 BW

The appeal of Matthew Bulzak, County Correction Officer, Camden County, Department of Corrections, 30 calendar day suspension, on charges, was heard by Administrative Law Judge Jeffery N. Rabin, who rendered his initial decision on June 8, 2018. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on July 18, 2018, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Matthew Bulzak.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 18TH DAY OF JULY, 2018



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 4001-17

AGENCY DKT. NO. 2016-1696

**IN THE MATTER OF MATTHEW
BULZAK, CAMDEN COUNTY
DEPARTMENT OF CORRECTIONS.**

Christopher A. Gray, Esq., appearing for appellant, Matthew Bulzak
(Sciarra & Catrambone, LLC, attorneys)

Antonietta P. Rinaldi, Assistant County Counsel, appearing for respondent,
Camden County Department of Corrections (Christopher A. Orlando,
County Counsel)

Record closed: April 27, 2018

Decided: June 8, 2018

BEFORE JEFFREY N. RABIN, ALJ:

STATEMENT OF THE CASE

Appellant, Matthew Bulzak, a former corrections officer for respondent, Camden County Department of Corrections (DOC), appeals a thirty calendar day disciplinary action for conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6); neglect of duty, in violation of N.J.A.C. 4A:2-2.3(a)(7); other sufficient causes, in violation of N.J.A.C. 4A:2-2.3(a)(12), those being violations of Camden County

Correctional Facility Rules of Conduct 1.1 Violations; 1.2 Conduct Unbecoming; 1.3 Neglect of Duty; 4.1 Courtesy; 4.5 Public Statement and Appearances, and General Orders #073, #074 and #203.

At issue is whether respondent DOC acted properly in suspending appellant for thirty calendar days.

PROCEDURAL HISTORY

Appellant was served with a Preliminary Notice of Disciplinary Action dated April 13, 2015, suspending him without pay for thirty calendar days.¹ A departmental hearing was held on October 16, 2015, and on October 28, 2015, a Final Notice of Disciplinary Action was served on appellant, suspending him without pay for a thirty-calendar day period of November 8, 2015, through December 7, 2015.

Appellant filed an appeal, failed to appear at a settlement conference scheduled for February 2, 2016, and his appeal was dismissed. Appellant's appeal was reinstated by Administrative Appeal issued on January 18, 2017, and the Civil Service Commission transmitted this matter to the Office of Administrative Law (OAL), where it was filed on March 22, 2017. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

After two adjournments for health-related reasons, the Hearing was held on April 24, 2018.² The record remained open until April 27, 2018, for post-hearing documentation, and the record closed on that date.

¹ Rather than a thirty-calendar day suspension for eight hours per day (240 hours), respondent treated this as a fifteen-working day suspension of twelve hours per day (180 hours).

² Appellant Bulzak failed to appear on April 24, 2018, but authorized his counsel by text message to proceed with the Hearing, which was acceptable to respondent-counsel.

FACTUAL DISCUSSION

Undisputed Facts from the within Hearing:

1. On March 25, 2015, appellant was employed as a Corrections Officer by respondent DOC, and had been so employed since 2009. (Exhibit R-2.)
2. On or about March 25, 2015, DOC Internal Affairs Investigator Sgt. Joseph Coleman used his personal Facebook account and discovered that appellant had posted on the Matthew Bulzak Facebook page that he worked as a "Zookeeper at Camden County Wildlife Refuge" (the "Facebook Post"). (Exhibits R-1 and R-2.) Appellant made this post while he was employed by DOC, and at a time when there was no Camden County Wildlife Refuge.
3. By March 26, 2015, appellant had removed the Facebook Post. (Exhibit R-4.)
4. Appellant offered two alternative explanations for why he wrote the Facebook Post; it was either a joke, or he wrote it to keep the public from knowing where he was employed. (Exhibit R-2.)
5. Appellant has stated that it was unprofessional for him to have referred to inmates as animals, and that such a reference was inappropriate. Appellant was familiar with the policies and procedures applicable to his position. (Exhibits R-2 and R-6 through 9.)
6. Appellant had one prior major disciplinary action on his record, a ten-day suspension from January 2015 for having posed with other officers for a cellphone photograph in the Camden County jail, shot from a contraband cellphone (employees were not permitted to bring cellphones into the jail). (Exhibit R-10.) Appellant was charged with a security violation, conduct unbecoming a public employee, neglect of duty, and inattentiveness to duty.

Testimony:

For respondent:

Sgt. **Joseph Coleman** had been with DOC for twenty-one years, twelve years as an Investigator for DOC's Internal Affairs department. He was responsible for monitoring social media accounts of DOC employees. It was irrelevant if a complaint had been filed, or whether social media violations happened while the officer was on-duty or off-duty. Because appellant's Facebook Post was on a public page, it could be viewed by members of the public. This could create problems at the county jail, because members of minority groups, such as African-Americans and Hispanics, could take appellant's post to mean that the jail is a zoo and the inmates are animals.

Credibility:

In evaluating evidence, it is necessary to assess the credibility of the witnesses. Credibility is the value that a finder of the facts gives to a witness's testimony. It requires an overall assessment of the witness's story in light of its rationality or internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F. 2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself," in that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone, 5 N.J. 514, 522 (1950).

A fact finder "is free to weigh the evidence and to reject the testimony of a witness . . . when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." Id. at 521-22; see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). A trier of fact may also reject testimony as "inherently incredible" when "it is inconsistent with other testimony or with common experience" or "overborne" by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

After having the opportunity to review the evidence and observe his testimony, I accept Sgt. Coleman's testimony as credible and truthful. Accordingly, I **FIND** as fact that: Appellant's Facebook page was accessible to the general public. Appellant's Facebook Post could create safety problems at the county jail, because inmates could take appellant's post to mean that employees consider the jail to be a zoo and the inmates to be animals.

LEGAL ARGUMENT AND CONCLUSION

At issue is whether respondent DOC acted properly in suspending appellant for thirty calendar days.

Appellant's rights and duties are governed by the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his or her employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.

In assessing the propriety of a penalty in a civil disciplinary action, the primary concern is the public good; factors to be considered are the nature of the offense, the concept of progressive discipline and the employee's prior record. George v. North Princeton Development Center, 96 N.J.A.R. 2d 465 (CSV)(1996). Progressive discipline is required in those cases where an employee is guilty of a series of offenses, none of which is sufficient to justify removal. Harris v. North Jersey Developmental Center, 94 N.J.A.R. 2d (CSV)(1994).

Respondent charged appellant with conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6). In the DOC "Rules of Conduct", Topic 1.2, DOC personnel were required to conduct themselves in such a manner as to reflect positively on DOC, both on- and off-duty. It defined "Conduct unbecoming an employee" to include an action which "brings the department into disrepute, reflect discredit upon the employee as a member of the department, or which impairs the operation or efficiency of the department or the employee."

If appellant's sole interest was to protect his identity by not revealing where he was employed, he could have either denied the public access to his Facebook page, or chosen a fake job title unrelated to Camden County. By posting that he served as a "zookeeper" at a "wildlife refuge" in a county that does not operate a wildlife refuge, appellant left himself open to an interpretation that he worked at a zoo, filled with unruly animals and wildlife that needed a zookeeper to keep them under control. This might not only insult inmates by referring to them as animals and not humans, but might also insult the jail and jail employees themselves. Referring to a county facility as a "zoo" suggests that those responsible for the safe operation of the jail are not competent to perform their job functions, discrediting the men and women who work the difficult positions associated with working in a jail. Inmates' families, or inmates themselves, might be able to look up Bulzak's name on Facebook and see that he considers them to be wild animals. This could lead to safety issues brought by inmates against jail personnel.

Appellant himself stated that he was familiar with the policies and procedures applicable to his position, and admitted that it was not professional for him to have referred to inmates as animals, and that such a reference was inappropriate.

Accordingly, I **CONCLUDE** that appellant's Facebook Post evidenced conduct unbecoming a public employee.

As to the charge of neglect of duty, pursuant to N.J.A.C. 4A:2-2.3(a)(7), such neglect is defined in DOC's Rules of Conduct. (Exhibit R-6, Topic 1.3.) Any failure to comply with any departmental rule which causes a detriment to DOC or its personnel will be considered a neglect of duty.

Appellant failed to comply with several DOC rules: Appellant violated the "Personal Conduct of Employees" policy (General Order #73) by showing disrespect and lack of courtesy to inmates and jail employees, and exhibiting behavior which could demonstrate prejudice, contempt or ridicule towards inmates. (Exhibit R-7.) Appellant violated the "Professional Code of Conduct" by failing to demonstrate respect towards

fellow jail employees. (Exhibit R-8.) Appellant violated General Order #74 by publicly criticizing or ridiculing DOC and/or its employees. Appellant violated General Order #203 by posting onto social media a statement which might undermine the public trust and confidence in officers and employees of DOC, or which was a negative comment on the internal operation of DOC, by insinuating that the Camden County Jail was a zoo. (Exhibit R-9.)

Accordingly, I **CONCLUDE** that appellant's Facebook Post evidenced neglect of duty.

Once a determination is made that an employee has violated a statute, regulation or rule concerning his employment, the concept of progressive discipline must be considered. W. New York v. Bock, 38 N.J. 500 (1962). Appellant had a prior major disciplinary action on his record, having been charged in January 2015 with a security violation, conduct unbecoming a public employee, neglect of duty, and inattentiveness to duty. He was given a ten-day suspension. In both disciplinary actions the charges included conduct unbecoming a public employee and neglect of duty. It was therefore reasonable to issue a longer suspension for a second major disciplinary action. Because the second disciplinary action was discovered a mere two months after the first, a thirty-calendar day suspension (which in reality was only a fifteen-work day suspension) appeared reasonable.

I **CONCLUDE** that DOC acted properly in suspending appellant for a thirty-calendar day period.

ORDER

I **ORDER** that the disciplinary action of respondent Camden County Department of Corrections in suspending appellant Bulzak from his position as a Corrections Officer for thirty calendar days is **AFFIRMED**, and that the appeal is hereby **DISMISSED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION** pursuant to N.J.A.C. 1:1-18.6., by which law it is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 8, 2018

DATE



JEFFREY N. RABIN, ALJ

Date Received at Agency:

June 8, 2018

Date Mailed to Parties:

June 8, 2018

JNR/cb

APPENDIX

WITNESSES

For appellant:

None

For respondent:

Sgt. Joseph Coleman

Karen Taylor, Camden County Warden

EXHIBITS

For appellant:

None

For respondent:

- R-1 Appellant's Facebook page
- R-2 Internal Affairs Interview of appellant, dated March 25, 2015
- R-3 Supervisor's Complaint Report, dated March 25, 2015
- R-4 General Incident Report (Rebuttal), dated March 26, 2015
- R-5 Preliminary Notice of Disciplinary Action served on petitioner, dated April 13, 2015; and Final Notice of Disciplinary Action served on petitioner, dated October 28, 2015
- R-6 DOC Rules of Conduct
- R-7 DOC General Order #073
- R-8 DOC General Order #074
- R-9 DOC General Order #203
- R-10 Appellant Disciplinary History